

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of ARM 17.8.102, 17.8.103,) PROPOSED AMENDMENT
17.8.106, 17.8.130, 17.8.316,)
17.8.320, 17.8.340, 17.8.401,)
17.8.801, 17.8.819, 17.8.822,) (AIR QUALITY)
17.8.1201 and 17.8.1204)
pertaining to incorporation by)
reference of current federal)
regulations and other)
materials into air quality)
rules)

TO: All Concerned Persons

1. On January 21, 2004, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., January 12, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES AND
AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly
provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the
reference is to the July 1, ~~2002~~ 2003, edition of the Code of
Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by
reference, the reference refers to the 1994 edition of the USC
and Supplement ~~5-(2000)~~ I (2002);

(c) referred to a section of the Montana Code Annotated
(MCA), the reference is to the ~~2001~~ 2003 edition of the MCA;

(d) adopted another rule of the department or of another
agency of the state of Montana by reference, the reference is to
the December 31, ~~2002~~ 2003, edition of the Administrative Rules
of Montana (ARM).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (n) remain the same.

(o) the Montana Source Testing Protocol and Procedures Manual (July 1994 ed.), a department manual pertaining to sampling and data collection, recording, analysis and transmittal requirements; and

(p) through (4) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.106 SOURCE TESTING PROTOCOL (1) remains the same.

(2) All emission source testing, sampling and data collection, recording, analysis, and transmittal must be performed as specified in the Montana Source Testing Protocol and Procedures Manual, unless alternate equivalent requirements are determined by the department and the source to be appropriate, and prior written approval has been obtained from the department. If the use of an alternative test method requires approval by the administrator, that approval must also be obtained.

(3) Unless otherwise specified in the Montana Source Testing Protocol and Procedures Manual or elsewhere in this chapter, all emission source testing must be performed as specified in any applicable sampling method contained in: 40 CFR Part 60, Appendix A; 40 CFR Part 60, Appendix B; 40 CFR Part 61, Appendix B; 40 CFR Part 51, Appendix M; 40 CFR Part 51, Appendix P; and 40 CFR Part 63. Such emission source testing must also be performed in compliance with the requirements of the EPA Handbook for Air Pollution Measurement Systems. Alternative equivalent requirements may be used if the department and the source have determined that such alternative equivalent requirements are appropriate, and prior written approval has been obtained from the department. If approval by the administrator of an alternative test method is required, that approval must also be obtained.

(4) remains the same.

(5) Any changes to the Montana Source Testing Protocol and Procedures Manual shall follow the appropriate rulemaking procedures.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.130 ENFORCEMENT PROCEDURES--NOTICE OF VIOLATION--ORDER TO TAKE CORRECTIVE ACTION (1) Contents of written notice of violation. ~~The~~ A notice of violation may contain, but is not limited to:

(a) ~~The~~ the name of the alleged violator-~~i~~

(b) ~~His~~ the last known address of the alleged violator-;

(c) ~~The~~ the number of the permit, if any, issued under 75-

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2-204 and 75-2-211, MCA;

(d) ~~A~~ a summary of the complaint made by the department including:

(i) the specific provisions of the statute, ~~or~~ rule or permit alleged to be violated;

(ii) the specific facts alleged to constitute a violation; and

(e) ~~A copy of either:~~

~~(i) the any order to take corrective action, order to pay an administrative penalty, or both if given, or;~~

~~(ii) the notice of hearing requested by the board to answer the charge.~~

(f) ~~If~~ if the ~~board~~ department has issued an order to take corrective action, a statement in conspicuous type stating that the alleged violator will be found in default and the order will become final and enforceable unless, not later than 30 days after the notice is received, the person named ~~therein shall petition the board requests,~~ in writing, ~~for~~ a hearing before the board.

(2) remains the same.

AUTH: 75-2-111, MCA

IMP: 75-2-401, MCA

17.8.316 INCINERATORS (1) through (4) remain the same.

(5) This rule applies to performance tests for determining emissions of particulate matter from incinerators. All performance tests shall be conducted while the affected facility is burning solid or hazardous waste representative of normal operation. Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Testing Protocol and Procedures Manual.

(6) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.320 WOOD-WASTE BURNERS (1) through (8) remain the same.

(9) Rubber products, asphaltic materials, or other prohibited materials specified in ARM 17.8.604~~(2)~~(1)(b) through (d), (f) through (r), (t), ~~and~~ (u), (w) and (y) may not be burned or disposed of in wood-waste burners.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.340 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES (1) through (3) remain the same.

(4) The following apply to designated municipal solid waste landfill facilities under 40 CFR Part 60, subpart Cc:

(a) ~~Designated municipal solid waste landfill facilities under 40 CFR Part 60, subpart~~ Subpart Cc shall comply with the

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requirements in 40 CFR 60.33c, 60.34c, and 60.35c, that are applicable to designated facilities and that must be included in a state plan for state plan approval.

(b) through (6)(c)(ii) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.401 DEFINITIONS In this subchapter, the following definitions apply:

(1) through (3)(b) remain the same.

(4) "Excessive concentration" as used in (2)(c) means:

(a) remains the same.

(b) For sources seeking credit after October ~~±~~ 11, 1983, for increases in existing stack heights up to the heights established under (2)(b), either:

(i) through (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) through (21)(d) remain the same.

(22) The following apply to the definition of the term "major stationary source":

(a) through (b) remain the same.

(c) The fugitive emissions of a stationary source may not be included in determining, for any of the purposes of this subchapter, whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) through (xxvi) remain the same.

(xxvii) any other stationary source category which, as of August 7, 1980, is being regulated under sections ~~7411~~ 111 or ~~7412~~ 112 of the FCAA.

(23) through (29) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.819 CONTROL TECHNOLOGY REVIEW (1) remains the same.

(2) A new major stationary source shall apply BACT for each pollutant subject to regulation under the FCAA that it would have the potential to emit in significant amounts, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section ~~7408~~ 108(a)(1) of the FCAA. In evaluating the environmental impacts of any control technology option, the BACT analysis shall consider all pollutants, including hazardous air pollutants.

(3) and (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.822 AIR QUALITY ANALYSIS (1) through (6) remain the same.

(7) The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of subchapter ~~17~~ 9 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under (1) ~~of this rule~~.

(8) and (9) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1201 DEFINITIONS In this subchapter, unless indicated otherwise, the following definitions apply:

(1) through (14) remain the same.

(15) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section ~~7412~~ 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(16) through (33) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1204 AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY (1) through (2)(c) remain the same.

(3) The department may exempt a source listed in (1) ~~above~~ from the requirement to obtain an air quality operating permit by establishing federally enforceable limitations which limit that source's potential to emit, such that the source is no longer a major stationary source, as defined by ARM 17.8.1201(23).

(a) remains the same.

(b) Any source that obtains a federally enforceable limit on potential to emit shall annually certify that its actual emissions are less than those that would require the source to obtain an air quality operating permit. Such certification shall include the type of information specified in (3)(a) ~~above~~.

(c) through (7) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, MCA

REASON: The proposed amendments to ARM 17.8.102 would adopt revisions to the federal air quality regulations that are incorporated by reference in the Montana air quality rules. These revisions were published in the Federal Register between July 1, 2002, and June 30, 2003, and are included in the July 1, 2003, edition of the Code of Federal Regulations (CFR). The proposed amendments to ARM 17.8.102 also would incorporate the

most recent editions of the Montana Code Annotated (MCA) and the Administrative Rules of Montana. These proposed amendments are necessary to allow the Department of Environmental Quality to follow the most recent editions. Also, incorporation of recent revisions to federal regulations incorporated by reference in the Montana air quality rules is necessary for the state to retain primacy over Montana's air quality program.

The proposed amendments to the titles of ARM 17.8.102 and 17.8.103 reflect that the availability of referenced documents now is included in ARM 17.8.103 rather than in ARM 17.8.102.

The proposed amendments to ARM 17.8.103, 17.8.106 and 17.8.316 correct the internal references to the Montana Source Test Protocol and Procedures Manual.

The proposed amendments to ARM 17.8.130 would update language and would make minor editorial changes and corrections necessary to conform to 75-2-401(1), MCA.

The proposed amendments to ARM 17.8.320 would make corrections to internal citations to reflect previous amendments to subchapter 6.

The proposed amendments to ARM 17.8.340 would eliminate "double earmarking" of sections to conform to the current numbering style of the office of the Secretary of State and make minor editorial changes.

The proposed amendment to ARM 17.8.401 is a clerical amendment that would correct a date to conform to the date specified in 40 CFR 51.100(kk)(2).

The proposed amendments to ARM 17.8.801, 17.8.819 and 17.8.1201 would correct the style of Federal citations, and the proposed amendment to ARM 17.8.822 would update an internal citation.

The proposed amendment to ARM 17.8.1204 would update the style of internal references to conform to the current rule drafting style of the office of the Secretary of State.

The Board will also take testimony on submission of the proposed amendments to EPA as proposed revisions to the State Implementation Plan (SIP).

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., January 28, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the

person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@state.mt.us; or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

BY: _____
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, December 15, 2003.